**Reportable**
**IN THE HIGH COURT OF DELHI AT NEW DELHI**
**+RFA No. 575/2005**

Date of Decision: 20.09.2007

#Smt. Narinder Pal Kaur Chawla .....Appellant
! Through : In person

Versus

$Shri Manjeet Singh Chawla .....Respondents
^ Through Mr. Rajit Singh

**CORAM :-**

***THE HON'BLE MR.JUSTICE A.K.SIKRI**
**THE HON'BLE MS.JUSTICE ARUNA SURESH**

1.Whether Reporters of Local papers may be allowed to see the Judgment?
2.To be referred to the Reporter or not?
3.Whether the judgment should be reported in the Digest?

**A.K. SIKRI, J.**

1. The appellant herein is duped by the respondent. The respondent, who was already married to one Amarjeet Kaur suppressing this marriage and pretending that he was still a bachelor, married the appellant on 11.12.1977, according to Sikh rites and ceremonies at Jalandhar. Both of them lived as husband and wife for number of years at the matrimonial house, i.e. A-447, Defence Colony, New Delhi. Two daughters were born out of this wedlock, on 18.2.1981 and 31.5.83 respectively. According to the appellant, she decided to complete her B.A. Degree, which she had left

incomplete earlier before marriage. Therefore, she picked up her studies again. In April 1991, she went to Paghwara, Punjab, to take the exams. On 13.6.1991 when she returned, her mother-in-law did not allow her to go inside the house. She was, thus, deserted by the respondent. At that time she came to know that the respondent was already married to Smt. Amarjeet Kaur.

2. The appellant did not swallow this insult to her. She filed a criminal case against the respondent for committing bigamy (in this case the respondent has been convicted). She also filed a petition under Sections 18 and 20 of the Hindu Adoption and Maintenance Act (in short the 'Act') claiming recovery of maintenance and right of residence from the respondent. She claimed decree of maintenance at the rate of Rs.12,000/- per month plus rent of residence and also prayed for necessary charge on the matrimonial house A-447, Defence Colony for securing the right of maintenance. The petition was filed as an indigent person under Order XXXIII Rule 1 CPC, which was allowed.

3. This petition was originally filed in this Court. On

28.8.1997, order was passed directing the respondent to pay interim maintenance of Rs.5,000/- to the petitioner. Vide order dated 2.3.2000, the Court ordered for payment of a further sum of Rs.10,000/- to the appellant by way of interim maintenance. Thereafter, vide order dated 28.4.2000 further maintenance of Rs.5,000/- was allowed. Application for interim maintenance was ultimately decided by the Court vide order dated 11.1.2002 granting interim maintenance of Rs.400/- per month. The quantum was challenged by the appellant by filing appeal before the Division Bench, which enhanced the maintenance to Rs.700/- from 1.8.2003 vide orders dated 25.7.2002. On further appeal to the Supreme Court, this interim maintenance was enhanced to Rs.1,500/- per month with effect from May 2004 till the disposal of the suit, vide order dated 21.4.2004.

4. On enhancement of the pecuniary jurisdiction of the District Courts, the petition was transferred to the District Court on 27.11.2003. The respondent did not file the written statement and ultimately vide order dated 11.10.2004 the right of the respondent to file the written statement was

struck off. The appellant appeared in the witness-box and submitted her affidavit by way of evidence (Ex. PW 1/1). She also proved various other documents showing financial status of the respondent as well as the appellant's mother-in-law. The respondent did not lead any evidence.

5. The learned trial court, however, has dismissed the petition of the petitioner vide impugned order dated 13.7.2005. This petition is not dismissed on merits but on the ground that such a petition filed by the appellant under Section 18 of the Act claiming maintenance from the respondent is not maintainable as the appellant is not a legally wedded "wife" of the respondent. This finding is arrived at by the learned trial court on the premise that since the respondent was already married to one Amarjeet Kaur, his second marriage with the appellant was clearly void and of no legal effect. It is held that under Section 18 of the Act, petition can be filed by a legally wedded wife and not by a person who is not lawfully married and for this conclusion the learned trial court has drawn the support from the judgment of the Supreme Court in the case of *Savitaben Somabhai Bhatiya Vs. State of Gujarat*, AIR 2005 SC 2141

and of this Court in the case of *Ms. Suresh Khullar Vs. Vijay Khullar*, II (2002) DMC 131. Challenging this judgment, present appeal is filed.

6. The appellant argued the appeal herself whereas Mr. Ranjit Singh, Advocate, appeared for the respondent. Learned counsel for the respondent relied upon the reasoning given by the trial court in dismissing the petition of the appellant herein. His submission was that since the appellant was not legally wedded wife, she could not file petition under Section 18 of the Act, as held by the Supreme Court in *Savitaben Somabhai Bhatiya* (supra).

7. The appellant, on the other hand, submitted that it is the respondent who suppressed the factum of first marriage and on his representation that he was a bachelor, the appellant and the appellant married the respondent on 11.12.1977. They lived as man and wife for 14 years before the appellant was denied entry into the house and was deserted by the respondent on 14.4.1991. In such circumstances, it was not open to the respondent to take advantage of his own wrong and deny maintenance to the appellant, who was not a “concubine” of the respondent,

who lived with him by marrying him.

8. We have given deep thoughts to the respective contentions of the parties and have also gone through the record. The admitted position, which has emerged on the record of this case, may be taken note of as that will have important bearing on the outcome of the case:-

    a) the respondent did not file any written statement to the petition for maintenance filed by the appellant and the right of the respondent to file the written statement was struck off. The appellant examined herself as PW-1 and proved various documents. The respondent has not led any evidence. Therefore, the material, which has come on record as proved by the appellant, remains unchallenged, there being no evidence in rebuttal by the respondent.

    b) the parties had married on 11.12.1977 according to Sikh rites and ceremonies. They lived together till 14.4.1991, i.e. for almost 14 years. During this period, two daughters were born out of the said wedlock.

c) As per the testimony of the appellant, at the time of marriage the respondent had pretended that he was a bachelor. The appellant, therefore, had no knowledge that the respondent was already married. Not only that, for a long period of 14 years when the parties lived as husband and wife in the matrimonial house at Defence Colony, the first wife had not surfaced nor was there any interference in the matrimonial life of the parties.

d) In the petition filed by the appellant under Section 18 and 20 of the Act, interim orders were initially passed directing the respondent to pay particular amount as maintenance. Thereafter, interim maintenance was fixed at Rs.400/- per month by the Single Judge of this Court vide order dated 11.1.2002. The Division Bench enhanced that maintenance to Rs.700/- from 1.8.2003 by orders dated 25.7.2002. This was further enhanced to Rs.1500/- per month with effect from May, 2004 by the Hon'ble Supreme Court. Order dated 21.4.2004 passed by the Supreme Court fixing maintenance is

reported as *Narinder Pal Kaur Chawla Vs. Manjeet Singh Chawla*, **(2004) 9 SCC 617** and reads as under:-

> "1. Leave granted.
>
> 2. Heard the petitioner in person and learned counsel appearing for the respondent. We have also perused the counter affidavits and rejoinders along with the written submissions filed by the parties.
>
> 3. The present appeal arises out of an interim order dated 11.1.2002 passed by the learned Single Judge of the High Court of Delhi in the course of proceedings Instituted by the present appellant claiming to be the second wife of the respondent for grant of maintenance to her under Section 18 read with Section 20 of the Hindu Adoption and Maintenance Act [for short the Act]. The learned Single Judge on the original side of the High Court in the pending proceeding under the Act has by order dated 11.1.2002 granted an interim maintenance of Rs. 400/- per month to the wife.
>
> 4. The wife appealed to the Division Bench of the High Court. By order dated 25.7.2003 which is the subject matter of this appeal, the interim maintenance has been increased to Rs. 700/- per month. Not satisfied with the increase In the amount of interim maintenance granted by the Division Bench, the wife has approached this Court seeking farther enhancement of rate of interim maintenance.
>
> 5. By this appeal, Interim maintenance @ Rs. 12,000/- per month has been claimed on the

ground that the respondent/husband has taken voluntary retirement from the Bank's services and has received substantial amount of retiral benefits. It is stated that he is possessed of valuable properties and assets which are sufficient to pay higher amount of maintenance to the wife to enable her to maintain a reasonable standard of living to which the parties are accustomed.

6. The husband is contesting the maintenance proceeding both on the ground of competence of the present wife to claim maintenance and the quantum.

7. Normally, this Court would not have entertained this appeal as it is directed against an order fixing only interim maintenance pending adjudication of claim of maintenance by the wife under the Act: On the prima facie evidence with regard to the social and financial status of the parties, this Court finds that interim maintenance of Rs. 700/- per month fixed by the Division Bench of the High Court is extremely low. Therefore, after notice issuing on the Special Leave Petition, this appeal is entertained.

8. Before the High Court, It appears that at one stage, reconciliation efforts were made in which the husband had agreed to provide second floor of the accommodation owned by him for separate residence of the wife with Rs. 1,500/- per month as permanent alimony to her during her life. Efforts of reconciliation, however, failed as at a later stage, the wife backed out. The copies of orders passed by the Division Bench of High Court on 13.2.2003 and 17.2.2003, in the course of reconciliation proceedings, have been produced by the parties in this appeal.

> 9. As the legal right of the second wife to claim maintenance under the Act and its quantum are hotly contested issues in the main case, we refrain from expressing any opinion on merit of the claims and contentions of the parties. For the purpose of fixing appropriate amount of interim maintenance, we may assume that the financial position of husband is such that he can easily pay a sum of Rs. 1,500/- per month as interim maintenance without disturbing the right of separate residence provided to the wife at the second floor of the husband's premises.
>
> 10. The appeal, therefore, is partly allowed by increasing the amount of interim maintenance to Rs. 1,500/- per month which shall be payable at the above rate from the month of May, 2004 until decision of the main case pending under the Act on the original side of the High Court. It is made clear that the High Court shall decide the main case on merits uninfluenced by orders passed for fixing interim maintenance.
>
> 11. In the circumstances, there shall be no order as to costs in this appeal."

9. The question that arises for consideration, in these circumstances, is as to whether the respondent can take advantage of his own wrong by not disclosing to the appellant the factum of his first marriage; marrying the appellant and then maintaining the relationship of husband and wife for a long period of 14 years. The position, which has emerged on record and noted above, further discloses

that during all this period when the appellant and the respondent were cohabiting as husband and wife, first wife of the respondent was nowhere on the scene. The respondent was away from her during this period and, therefore, the appellant remained totally oblivious about the said relationship. Both the parties, thus, lived as validly married couple for all these years and to the world at large the appellant was known as the lawfully wedded wife of the respondent. She took the responsibility of running the family as a housewife, taking care of the respondent as her husband and also bore two female children from him whom she nourished and brought up. She took the responsibility of marrying them as well, though this happened after the respondent withdrew from the appellant's company.

10. In these circumstances, we are of the opinion that the legislature never intended that a woman like the appellant, in which position she is placed, be not treated as the 'wife' of the respondent at least for the purposes of Section 18 of the Act and be deprived of her right to seek maintenance. We are conscious of the judgment of the Supreme Court in

the case of *Savitaben Somabhai Bhatiya* (supra). However, that was a case where the second wife was claiming maintenance under Section 125 Cr.P.C.. While holding that the expression 'wife' contained therein refers only to legally wedded wife, the Court observed in para-8 of the judgment as under:-

> "8. There may be substance in the plea of learned counsel for the appellant that law operates harshly against the woman who unwittingly gets into relationship with a married man and Section 125 of the Code does not give protection to such woman. This may be an inadequacy in law, which only the legislature can undo. But as the position in law stands presently there is no escape from the conclusion that the expression 'wife' as per Section 125 of the Code refers to only legally married wife."

11. It is, thus, clear that the expression 'wife' was construed only in the context of Section 125 Cr.P.C.. The Court did not discuss the interpretation of Section 18 of the Act. Rather, following observations contained in this very judgment encourage us to embark on the interpretation of Section 18 of the Act on the basis of the language used in the said provision:-

> "10. There is no inconsistency between

> Section 125 of the Code and the provisions in the Hindu Adoption and Maintenance Act, 1956 (in short the 'Adoption Act') “

12. Other judgments where such a view is taken also relate to the interpretation of Section 125 Cr.P.C. It would be apt to take note of the language of Section 125 Cr.P.C. at this stage itself, so that were are able to contrast the same with Section 18 of the Act. Section 125 Cr.P.C. reads as under:-

> “**125.Order for maintenance of wives, children and parents.-**
>
> (1) If any person having sufficient means neglects or refuses to maintain-
>
> (a) his wife, unable to maintain herself, or
>
> (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
>
> (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain itself, or
>
> (d) his father or mother, unable to maintain himself or herself,
>
> a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not

exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation: For the purposes of this Chapter-

(a) 'minor' means a person who, under the provisions of the Indian Majority Act, 1875 is deemed to have attained his majority;

(b) 'wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."

13. Relevant portion of Section 18 of the Act, which entitles a Hindu wife to claim maintenance and also residence is couched in the following language:-

"**18. Maintenance of wife**

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

> (2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance -
>
> (a) .....
>
> (b) .....
>
> (c) .....
>
> (d) If he has any other wife living;
>
> (e) If he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;"

14. Sub-Section (2) of Section 18 of the Act entitles a Hindu wife to claim maintenance against her husband even if he has other wife living. This gives an impression that even a second wife may have right to claim maintenance. It is more so when, 'Hindu wife' has not been defined under the Act. In the absence of any such definition given in the Act, we have to interpret the expression in the spirit in which it appears in the statute. This is more so when as per the provision of Section 4 of the Act, no external aid (from other statutes) is to be brought to define Hindu wife. Section 4 clearly gives overriding effect to this Act.

This Act was brought into force in the year 1956. As on that date Hindu Marriage Act, 1955 was already in force, which contains provision like Section 5 regarding void

marriages. If “second wife”, though her marriage is void under the Hindu Marriage Act, was to be denied maintenance, then the legislature would not have included provision like clause (d) in sub-section (2) of Section 18 of the Act or would have clarified that this clause was added only to take care of those second marriages performed before the Hindu Marriage Act, 1995 was enacted when polygamy was permissible for male Hindus.

15. Clause (e) of sub-section (2) of Section 18 of the Act, which uses the expression 'concubine' would also lend colour to the expression 'Hindu wife' inasmuch as, the legislature has carved out a distinction between 'second wife' and 'concubine'. “Concubine” has been defined in various dictionaries as under:-

> Oxford Dictionary of Difficult Words-2002 defines
> ***Concubine*:** *A woman who lives with a man but has lower status than his wife or wives.*
>
> Black's Law Dictionary, 7th Edn. Defines
> ***Concubine*:** *A woman who cohabits with a man to whom she is not married.”*

16. Thus, Section 18 of the Act uses the expression 'Hindu

wife', 'wife' and 'concubine' and 'Hindu wife' and 'wife' are definitely be on a high pedestal then 'concubine'. Very recently, this Bench has decided RFA No.350/2007 entitled *Suresh Kullar vs. Sh. Vijay Kumar Khullar*. In our judgment rendered on 27.8.2007 in the said case where also we were interpreting the same provision of the Act, we dilated this principle in the following manner:-

> "18. It is trite that while interpreting the statute, courts not only may take into consideration the purpose for which the same has been enacted, but also the mischief it seeks to suppress (See *Sneh Enterprises Vs. Commissioner of Customs*, 2006 (8) JT 587). We may also, with advantage apply the maxim ***construction ut res magis valeat quam pereat***, namely, where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than the one which would put hindrances in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result (See *Nokes v. Doncaster Amalgamation Collieries Ltd.*, 1940 AC 1014 [Maxwell pg. 45]). Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be

> regulating; and that alternative is to be rejected which will introduce uncertainty, fiction or confusion into the working of the system (*Shannon Realities Ltd. v. Ville de St. Michel*, (1924) A.C. 185 [Maxwell pg. 45]). We hasten to add that this interpretation we are giving only in deciding the question of entitlement of the appellant to claim maintenance from the respondent under Section 18 of the Act."

17. We had also taken support from the provisions of Protection of Women from Domestic Violence Act. In a case like this, if the interpretation we are suggesting is not given, it would amount to giving premium to the respondent for defrauding the appellant. Therefore, we feel that in a case like this, the appellant, at least for claiming maintenance under Section 18 of the Act, be treated as legally wedded wife. Even when two interpretations are possible, one which would advance the purpose for which the Act was enacted should be preferred than the other, which may frustrate the purpose.

18. At this stage, it would be of interest to refer to a judgment of the Supreme Court in the case of *Reema Aggarwal Vs. Anupam and others*, **AIR 2004 SC 1418**. That was a case of dowry death where the respondent was prosecuted under Section 498-A and Section 304-B of the Indian Penal

Code. The plea taken by the respondent in that case was that it was his second marriage with the deceased and being an invalid marriage, demand of dowry in respect of that marriage was not legally recognisable and, therefore, he could not be prosecuted under Section 498-A and Section 304-B, as he was not the 'husband' of the deceased whereas the said provisions make 'husband' liable for the offence. The Court, though held that demand of dowry in respect of an invalid marriage would not be legally recognisable, it was of the opinion that the purpose for which Sections 498-A and 304-B IPC and Section 113-B of the Evidence Act were introduced could not be ignored. It also noted that 'husband' was not specifically defined to include a person, who contacts marriage ostensibly and cohabit with such woman in purported exercise of his role and status as husband, would be treated as husband and could be prosecuted under the said provisions. The Apex Court pressed into service “mischief” rule and purposive interpretation to hold that for the purpose of Sections 498-A and 304-B IPC, a person, who enters into second marriage, which may not be a legal marriage, would be

treated as 'husband' and could be prosecuted. This eloquent message that nobody gets undue benefit of his such dubious actions is expressed by the highest Court of the land (speaking through Hon'ble Mr. Justice Arijit Pasayat) in the following forceful words:-

> "**18.** The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legislation problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B IPC and Section 113B of the Indian Evidence Act, 1872 (for short the 'Evidence Act') were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on, becomes a victim of the greed for money. **Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would** encourage harassment to a woman over demand of money. The nomenclature 'dowry' does not have any magic charm written over it. It is just a

label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. Legislature has taken care of children born from invalid marriages. Section 16 of the Marriage Act deals with legitimacy of children of void and voidable marriages. **Can it be said that legislature which was conscious of the social stigma attached to children of void and voidable marriages closed eyes to plight of a woman who unknowingly or unconscious of the legal consequences entered into the marital relationship. If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages.** The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction". It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions - Sections 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabitate with such woman, in the purported exercise of his role and status as 'husband' is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those

provisions."

19. When, to advance the purpose for which Sections 498-A and 304-B IPC were introduced by the legislature in the Indian Penal Code, the Court can read a male entering into second matrimonial alliance, as 'husband', why for the purpose of granting maintenance to a woman under Section 18 of the Act, second wife be not treated as 'Hindu wife' in the absence of definition 'Hindu wife' specifically excluding second wife, more so when interpretation of Section 18 of the Act, which we have suggested above, is a possible interpretation.

20. There is yet another reason to allow this appeal. Even if it is presumed that the appellant could not be treated as 'Hindu wife' since she is not legally wedded wife of the respondent (though we have not accepted this contention in view of our discussion above), such a wife is entitled to lump sum amount in the form of damages or otherwise. In this context, we may take shelter under the following observations of the Supreme Court in the case *Rameshchandra Rampratapji Daga Vs. Rameshwari Rameshchandra Daga*, **(2005) 2 SCC 33:-**

> "20. It is well known and recognized legal position that customary Hindu Law like Mohammedan Law permitted bigamous marriages which were prevalent in all Hindu families and more so in royal Hindu families. It is only after the Hindu Law was codified by enactments including the present Act that bar against bigamous marriages was created by Section 5(i) of the Act. **Keeping into consideration the present state of the statutory Hindu Law, a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependent**. It is with the purpose of not rendering a financially dependent spouse destitute that Section 25 enables the court to award maintenance at the time of passing any type of decree resulting in breach in marriage relationship."

21. Giving jurisprudential exposition to the 'right of maintenance' to a wife from her husband, the Bombay High Court in the case of *Rajeshbai and Ors. Vs. Shantabai*, **AIR 1982 Bom. 231**, went to the extent of holding that right to claim maintenance was not limited by the statutory provisions like Hindu Adoption and Maintenance Act but could arise under the general principles of law regarding the maintenance and the Court would be in a position to grant the same. For this purpose, the Court drew

distinction between English Law and Hindu Law on the premise that in English Law, marriage was a matter of contract, whereas under the Hindu system it is sacrosanct. From this detailed judgment, we extract some of the paras, which may be useful for our purposes:-

> "34. However, that in my view. Can not be the end result of such cases where the finding is recorded by the competent Court that the marriage is void de jure Firstly, the provisions of the Hindu Adoptions and Maintenance Act. 1956 are not the provisions which can be treated to be exhaustive of matters for awarding maintenance. To the extent the provisions are made there, the same would apply or be operative, but there would arise cases where the matter may arise under the general principles of law regarding the maintenance and the Court would be in a position to grant the same.
>
> 35. The measures for maintenance by themselves are secular and social in character. Those aim at avoiding immorality and destitution. Maintenance for juridical purposes has its own pragmatics having relation to the need and necessity to make provisions for securing reasonable bioeconomic as well as biocultural requirements for persons, such as shelter, food, garment and health. In the tenets of Hindu Shastric law, two principles subserve this need to provide reliefs of maintenance and those emanated firstly from social ethics and secondly because of personal economics. The persons related to each other and dependent as such, could look for such relief by reason of law both on the moral and secular grounds,

Subject to conditions, it was a personal obligation and where there was estate. The rights in maintenance could be worked against the estate, nay, was a charge upon. It the moral of pious obligations mostly arose as personal liabilities, while those against property could be classed as economic of secular ones.

36. The principles of Hindu personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against the destitution. There is clear evidence to indicate that the law of maintenance stems out of the secular desire and so as to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Organically and originally the law itself is irreligious. Its fountain spring is humanistic. In its operational field all through it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy by because of the need to subserve the social and individual morality measured for maintenance.

37. Further, it must be kept in view that the institution of property amongst the Hindus is a fine admixture of rights and duties, obligations and liabilities. In fact, it is an intermixture of corpus that is the right or entitlement to it, A Hindu may possess the property and yet is would be limited by moral and civic obligation. One of such recognised obligations. One of such recognised obligations inscribed into the property of a Hindu was that of maintenance of dependents. There is no reason to hold that by codification of the laws, this basic concept for providing a sort of social security and having general insurance in favour of dependents has been completely taken away or abrogated by passing of the Hindu Adoptions and Maintenance Act, 1956, Necessity to provide

even now may arise out of the premises of that Act and will have to be so worked out.

38. On parity of the principle that prevailed with this Court in Govindrao v, Anandibai, AIR 1976 Bom 433, it can be said that even after the Court rendered a decree of nullity under S. 11 of the Hindu Marriage Act. The wife related by such marriage was treated to be entitled under Sec. 25 of that Act to possess a right by have alimony and maintenance. Thus it is obvious that had the matter arisen during th life-time of Sadashiv between Sadashiv and Rajeshbai and the matter would have been under S. 11 , Rajeshbai would have been entitled to rely on Sec. 25 of the Hindu Marriage Act so as to claim the relief of maintenance. I do not think that only by reason of the fact that the proceedings are after the death of Sadashiv, there should be any change in the principle. If Sec. 25, as has been found by the above decision conferred a right that right could be worked out even in collateral proceedings if it be correct that the declaration of nullity for such a marriage could be rendered in such proceedings. Therefore, it will have to be found that Rajeshbai is entitled to rely on the principles of Sec. 25 of the Hindu Marriage Act and to invoke the powers of the Court for making provisions for just and fair maintenance.

39. Even apart from sec. 25 of the Hindu Marriage Act. 1 would think that in such matter the Court possesses the inherent power to make such order in matters or maintenance as may be necessary so as to meet the ends of justice. The principles underlying sec. 151, of the Civil, P. C. Are no more in doubt. Where the need and the the circumstances to do justice require, the power to act ex debito justitiae exists and can be invoked. That power as is

observed by the Supreme Court in Manoharlal v. Seth Hiralal, AIR 1962 SC 527, is not conferred on the Court but is inherent in the Court "by virtue of its duty to do justice between the parties before it". The power will not be exercised when there is any express prohibition enacted by any statute nor would it be terms of the Code. It would always be exercise undoubtedly and unfailingly to reach out a just and fair dispensation of justice to the parties before the Court.

40. When Laws' terms are inadequate and lead to loose ends in unfair tracts, the Court can rely on its inherent power to do justice, With changing complexity of human relations and times, everything cannot be provided by enacted statutes and unfailing as well as just results can be left to be worked out by the Courts possessing such power. This power has been exercised so as to grant maintenance pendente lite in partition suits. (Sec Sushilabai v. Ramcharan. 1976 Mah LJ 82). Along with this is the holding of the principles enunciated by this Court that under Sec.25 of the Hindu Marriage Act, the wife whose marriage is void would be entitled as of right to the relief of permanent maintenance once the marriage is annulled by a decree of nullity under Sec. 11. There is no reason to deny similar relier on pari materia principle, though strictly the decree is

not passed having reference to Sec. 11 of the Hindu Marriage Act. The right recognised by Sec. 25 of the Hindu Marriage Act can clearly be worked out in any civil proceeding subject to consideration of facts and circumstances so as to meet ends of justice by resort to the inherent powers conferred upon the Courts by Sec. 151 of the Civil P.C. The statutory references do not indicate that there is any prohibition or any specific provision in this

> regard. On the other hand, the principle is statutorily reconginsed that upon a decree being passed for nullifying the marriage as void de jure, the Court is possessed with ample power to make orders as to alimony and maintenance. What could, therefore, be available in special proceedings cannot be said to be not available when the same issue is involved collaterally in competent civil proceedings. Strictly, the statutory entitlement of the Court may not apply but having the recognised right and necessity to enforce it, the Court can, in exercise of its inherent powers reach out justice by giving remedial and such salutary reliefs. Justice after all is another name of fairness. It cannot be blind to the facts in a given case and should reach out in its mercy those results which would be necessary to avoid ruinous consequences like economic or moral destitution. Ultimately, having based the relief on Sec. 151 of the C. P. C. with the aid of inherent powers and drawing upon the principles underlying Sec. 25 of the Hindu Marriage Act, it is implicit that before maintenance is granted, the need to grant such must exist as well as the grantee must fulfill the ordinary conditions like that of chastity, not being married to any other person and further of not being in a position to maintain herself."

22. The appellant herein had claimed right to residence as well, which aspect has also not been dealt with by the learned trial court.

23. For all these reasons, we allow this appeal, set aside the impugned judgment and remand the case back to the

learned trial court to decide the claim of the appellant on merits. With the setting aside of the impugned judgment, the interim order of maintenance, as enhanced by the Supreme Court, shall stand revived. The appellant shall be paid arrears of interim maintenance for the intervening period. Such arrears shall be paid to the appellant within a period of two months from today and interim maintenance for future period shall be paid by 7th of each month.

24. The appellant shall also be entitled to costs in this appeal.

**(A.K. SIKRI)**
**JUDGE**

September 20, 2007
HP.

**(ARUNA SURESH)**
**JUDGE**